The denial to the mortgagor-member, under the facts of the principal case, of the right to credit any of the premium in satisfaction of his loan would, nevertheless, be so fraught with hardship as to excuse if not to justify the illogical decisions attempting to escape this result. But it is submitted that it is not necessary to be thus illogical. When a court of equity, in order to bring about the swift winding up of an insolvent building and loan association, permits a receiver to foreclose, it aids him to collect from the mortgagor-member, if he is not in default,[10] an obligation, not yet due under the agreement, in favor of an association which has failed to fulfil its contract.[11] Surely there can be no doubt that in determining the equities of the parties the court should take into consideration the damages inflicted on the shareholder by the association's inability to perform, and by the failure of the purpose with which he became a member. Evidently, if this is so, it only remains to determine the measure of his damages, which, it would seem, should properly be the difference between the actual market value of money at the time, and the amount which he actually paid. Accordingly the decision in the principal case, although perhaps not based on the strictest logic, by charging the borrower with legal interest and crediting him with premium and interest paid, approximated the correct result.[12]

TERMINATION OF EASEMENTS.—The right to exercise an easement, which is an incorporeal hereditament and an interest in land within the Statute of Frauds, arises by grant, express or implied, or by prescription. It is ordinarily terminated by a release, either actual, or presumed from some user made of the servient tenement by its owner, adverse to the enjoyment of the easement, and it may be brought to an end by the destruction of the particular property to which the easement is appurtenant, or by the happening of the contingency on which the cessation is made by the grantor to depend. Thus the grant of an easement of flowage for a specified mill comes to an end on the destruction of the mill,[1] and an easement of necessity ceases with the circumstances giving rise to it. Again, it is well settled that an easement is extinguished by the union of the dominant and servient estates in the same person, since in the nature of things one cannot have a right against his own land,[2] though where the estates in each are not coextensive in seisin, the easement is not terminated, but

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[10]While in the principal case it appeared that the defendant had not maintained his payment of instalments, the court treated him as if not in default. If the advanced member is in default credit is only given on the supposition that his interest at least equals in value the amount he has contributed. See Hale *v.* Gullick (1900) 13 S. D. 637; U. S. Ass'n's Assignee *v.* Rowland (1901) 109 Ky. 737, 743. In such a case if the association is insolvent he should be relegated to his rights as a shareholder.

[11]See Curtis *v.* Granite State Ass'n (1897) 69 Conn. 6.

[12]See Marion Trust Co. *v.* Trustees *supra;* Curtis *v.* Granite State Ass'n *supra;* Williamson *v.* Globe Co. (Tenn. 1901) 64 S. W. 298; *cf.* Towle *v.* American Ass'n *supra;* Low St. Ass'n *v.* Zucker (1877) 48 Md. 448; Preston *v.* Lamano *supra.*

[1]Day *v.* Walden (1881) 46 Mich. 575.

[2]Gayetty *v.* Bethune (1817) 14 Mass. 49.

merely suspended during the joinder.[3] So much is settled ground, but in considering the effect of non-user, abandonment, and estoppel the courts have not always reached consistent and logical results. It has been said that where the easement arises by prescription it may be lost by mere nonuser, though not where it arises by grant,[4] a distinction[5] which probably arose from a desire to protect purchasers of the record title, and which is clearly unsound on principle, since in the case of prescriptive easements a grant is presumed, and a title thus obtained should be as effective as though it arose in express grant. In any case, however, the bare fact of disuse by the owner of the dominant tenement cannot raise a presumption of title against him, since the legal seisin of an incorporeal hereditament is in him who has the title, until actual ouster.[6] Indeed the only inference that can be drawn is, that the dominant tenant had no occasion to use his right.

In other jurisdictions the courts, rejecting the doctrine of termination by nonuser but agreeing on the proposition that easements may be lost by abandonment, differ as to what shall be sufficient therefor.[7] Thus an intent to relinquish plus cesser of user has been deemed sufficient to constitute an actual abandonment without communication of such intention to the servient tenant,[8] and irrespective of any particular period of disuse.[9] A perfected title to real estate, however, cannot be abandoned[10] in view of the Statute of Frauds;[11] and the conclusion seems inevitable that an easement, which is equally an interest in land, should not be capable of being divested in this manner.[12] The doubt that an easement can be abandoned is well indicated in the statement frequently met with that to deprive the dominant tenant of the easement there must be an act on the part of the servient tenant done in reliance on a representation of abandonment.[13] This theory, while obscured by the term abandonment, in reality amounts to nothing more than this, that a license implied in fact permitting the servient tenant to do something on his land inconsistent with the further enjoyment of the easement by the dominant tenant will, after its execution, estop the licensor from complaining of

[3]Thus the joinder in one person of a life estate in one tenement and absolute title in the other merely suspends the easement. Thomas *v.* Thomas (1835) 2 Crompt., M. & R. 34.

[4]See Smyles *v.* Hastings (1860) 22 N. Y. 217, 224.

[5]In some jurisdictions this distinction has been made statutory. Cal. Civ. Code, § 811 subsec. 5.

[6]Arnold *v.* Stevens (Mass. 1839) 24 Pick. 106.

[7]The judicial confusion on the subject is reflected in the textbooks, as for example: "There cannot be abandonment of an easement without a release by deed, or evidence from which a jury can presume a release." Goodeve, Real Property, (5th ed.) 338.

[8]Jones *v.* Van Bochove (1894) 103 Mich. 98.

[9]See Weimer *v.* Simmons (1895) 27 Or. 1. However, disuse for twenty years has been regarded as furnishing strong evidence of an intention to abandon, Pratt *v.* Sweetser (1878) 68 Me. 344.

[10]Mayor etc. of Phila. *v.* Riddle (1855) 25 Pa. 1; *cf.* Clark *v.* Hammerle (1865) 36 Mo. 620, in which the contrary result was reached under the Spanish law.

[11]Barrett *v.* Coal Co. (1905) 70 Kan. 649.

[12]Day *v.* Walden *supra;* see Lovell *v.* Smith (1858) 3 C. B. [N. S.] 119.

[13]Scott *v.* Moore (1900) 68 Va. 668.

the interference. But in the first place, it is impossible to find any actual misrepresentation, and furthermore, since a license to do something on the land of the licensor[14] or licensee,[15] which tends to create an easement in favor of the tenement of the latter, is revocable even after it has been acted upon, it would seem that a license to interfere with an easement should be no less revocable. But whether or not the licensor is estopped from asserting his right in the latter case, it is difficult to see how the estoppel could be extended to a purchaser of the record title, whether with or without notice, since a license is personal merely, and does not run with the land.[16] It would therefore seem that while an easement may be suspended by license, it is not thus terminated; and on transfer of the land or, it is submitted, on destruction of the particular improvement, the right should again become enforceable, for the contrary doctrine leads to the untenable position that, under the fiction of an estoppel, the release of an interest in land is effected by parol in contravention of the Statute of Frauds.[17] The difficulty often found by the courts in applying the doctrine of abandonment is illustrated in the recent case of *Blenis* v. *Utica Knitting Co.* (1911) 130 N. Y. Supp. 740. The defendant, with the knowledge of the plaintiff, having built upon land over which the latter had a right of way, it was decided that since there was not sufficient proof of an intention to abandon and since the defendant had not been led by the plaintiff to treat the servient estate as free from the servitude, the erection constituted a nuisance. While the correct result seems to have been reached, the statement by the court[18] that "Such easement cannot be lost by mere nonuser for any length of time, but it may be extinguished by abandonment and nonuser for a period of twenty years, under circumstances showing an intention to surrender the easement," would indicate a failure to grasp clearly the principles upon which, it is submitted, the conclusion should have been based.

CONTRACTS OF FOREIGN CORPORATIONS MADE BEFORE COMPLIANCE WITH LOCAL STATUTORY CONDITIONS.—Though a corporation's legal existence, like the legislation that gives it birth, is bounded by the frontier of the State of its creation,[1] yet, in the absence of legislation, the common law principle of comity,[2] a contract of the foreign corporation would be secure.[3] All of our States, however, with the

[14]Minneapolis Mill Co. *v.* Minn. & St. Louis Ry. Co. (1892) 51 Minn. 304; Fentiman *v.* Smith (1803) 4 East 107; *contra,* Buchanan *v.* Logansport etc. R. Co. (1880) 71 Ind. 265.

[15]Bridges *v.* Purcell (N. C. 1836) 1 Dev. & Batt. 492; *contra,* Morse *v.* Copeland (Mass. 1854) 2 Gray 302.

[16]Minneapolis & W. Ry. Co. *v.* Minn. & St. Louis Ry. Co. (1894) 58 Minn. 128; see Roffey *v.* Henderson (1851) 17 Q. B. 574.

[17]See Miller *v.* Auburn & Syracuse R. R. Co. (N. Y. 1843) 6 Hill 61.

[18]p. 745.

[1]Bank of Augusta *v.* Earle (1839) 13 Pet. 519.

[2]Story, Conflict of Laws, 38.

[3]Beyond the home State, the corporation's acts are valid or void as legislation or public policy may determine, Waters-Pierce Oil Co. *v.* Texas (1899) 177 U. S. 28; Cowell *v.* Springs Co. (1879) 100 U. S. 55, for a State can either admit conditionally or entirely exclude the corporation, since it is not a "citizen" within the "privileges and immunities" clause of